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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/816,499

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Thomas E. Nahill

18083 USA

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10/09/2007

RISSMAN JOBSE HENDRICKS & OLIVERIO, LLP

ONE STATE STREET

SUITE 800

BOSTON, MA 02109

EXAMINER

HUSON, MONICA ANNE

ART UNIT

PAPER NUMBER

1791

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DELIVERY MODE

10/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/816,499

Applicant(s)

NAHILL ET AL.

Examiner

Monica A. Huson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-48 is/are pending in the application.
- 4a) Of the above claim(s) 35-37 and 46-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-34 and 38-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>040104, 072205</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Claims 15-34 and 38-45 in the reply filed on 19 July 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 35-37 and 46-48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 19 July 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 17, 20-27, and 30-34 rejected under 35 U.S.C. 102(b) as being anticipated by Beck (U.S. Patent 4,550,043). Regarding Claim 15, Beck shows that it is known to carry out a method of making a plastic container (Abstract) which includes the steps of (a) molding an intermediate plastic container product having a body and a moil integral with the body, the body being layered and including at least one layer of barrier material that extends part-way into but not throughout the moil (Column 4, lines 13-28; Column 5, lines 64-68; Column 6, lines 1-18); (b) removing an upper portion of the moil in which the barrier material is absent (Column 7, lines 9-40), and (c) removing a lower portion of the moil in which the barrier material is present, to form the container (Column 7, lines 9-40).

Regarding Claim 17, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, including a method wherein a plug is inserted into an open mouth of the container product after removal of the upper moil portion (Column 6, lines 64-68; cap=plug).

Regarding Claim 20, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, including a method wherein the removal of the upper moil portion maximizes the extent of the barrier layer in the lower moil portion (Column 4, lines 13-28; Column 5, lines 64-68; Column 6, lines 1-18).

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Regarding Claim 21, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, including a method wherein following removal of the upper and lower moil portions there is provided a radially outwardly extending flange at an open mouth of the container (Column 6, lines 64-68).

Regarding Claim 22, Beck shows the process as claimed as discussed in the rejection of Claim 21 above, including a method including securing a lid to the flange (Column 6, lines 64-68).

Regarding Claim 23, Beck shows the process as claimed as discussed in the rejection of Claim 22 above, including a method wherein the securing is by double-seam crimping of the lid to the flange (Column 6, lines 57-63).

Regarding Claim 24, Beck shows the process as claimed as discussed in the rejection of Claim 21 above, including a method wherein a radial outer edge of the flange is trimmed (Column 6, lines 57-63).

Regarding Claim 25, Beck shows the process as claimed as discussed in the rejection of Claim 24 above, including a method wherein the outer edge of the flange is cut on a circle located with respect to an axis of the open mouth of the container (Figure 16, element 136).

Regarding Claim 26, Beck shows the process as claimed as discussed in the rejection of Claim 21 above, including a method wherein a plug is inserted into an open end of the container product after removal of the upper moil portion, and the flange is trimmed on a circle located with respect to an axis of the plug and open end of the container product (Column 6, lines 57-68).

Regarding Claim 27, Beck shows the process as claimed as discussed in the rejection of Claim 21 above, including a method wherein the barrier layer extends to a radially outer edge of the flange (Figures 8-12).

Regarding Claim 30, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, including a method wherein the layers include at least one layer of polyethylene terephthalate (PET) (Column 3, lines 15-17).

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Regarding Claim 31, Beck shows the process as claimed as discussed in the rejection of Claim 30 above, including a method wherein the layers include inner and outer layers of PET (Figure 3).

Regarding Claim 32, Beck shows the process as claimed as discussed in the rejection of Claim 30 above, including a method wherein the barrier material is EVOH or nylon (Column 3, lines 23-24).

Regarding Claim 33, Beck shows the process as claimed as discussed in the rejection of Claim 30 above, including a method wherein the layers include the barrier layer between inner and outer layers of PET (Figure 3).

Regarding Claim 34, Beck shows the process as claimed as discussed in the rejection of Claim 30 above, including a method wherein the layers include five layers in the form PET/barrier/PET/barrier/PET (Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 18-19, 28-29, and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck, in view of Schmidt et al. (U.S. Patent 5,804,016).

Regarding Claim 16, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, but he does not show cutting with a laser. Schmidt et al., hereafter "Schmidt," show that it is known to carry out a method wherein the upper moil portion is removed with a laser (Column 9, lines 37-39). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Schmidt's laser to carry out the cutting step in Beck because lasers provide accurate and easily controllable cutting.

Regarding Claims 18 and 19, Beck shows the process as claimed as discussed in the rejection of Claim 17 above, but he does not show using lasers. Schmidt shows that it is known to carry out a method wherein a laser tool is positioned with respect to a container for removal of the lower portion (Column 9, lines 37-39). It would have been prima facie obvious to

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one of ordinary skill in the art at the time the invention was made to use Schmidt's laser to carry out the cutting step in Beck because lasers provide accurate and easily controllable cutting.

Regarding Claims 28 and 29, Beck shows the process as claimed as discussed in the rejection of Claim 15 above, but he does not show using recycled plastic for the molding. Schmidt shows that it is known to carry out a method wherein the moil is recycled regrind (Column 10, lines 55-60). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Schmidt's recycled plastic as the molding material in Beck's molding process in order to reduce material costs and waste.

Regarding Claim 38, Beck shows that it is known to carry out a method of making a plastic container (Abstract), which includes the steps of (a) blow molding an intermediate container product having a body and a moil integral with the body, the body being layered and including at least one intermediate layer of barrier material that extends part-way into but not throughout the moil (Column 4, lines 13-28; Column 5, lines 64-68; Column 6, lines 1-18), (b) removing an upper portion of the moil, in which the barrier material is absent, in a cutting operation (Column 7, lines 9-20), and (c) removing a lower portion of the moil, in which the barrier material is present, to form the container (Column 7, lines 9-20), wherein step (c) includes inserting a plug into an open end of the container and severing the lower portion of the moil with a cutting tool positioned by the plug (Column 6, lines 64-68). Beck does not show cutting with a laser. Schmidt shows that it is known to carry out a method wherein the upper moil portion is removed with a laser (Column 9, lines 37-39). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Schmidt's laser to carry out the cutting step in Beck because lasers provide accurate and easily controllable cutting.

Regarding Claim 39, Beck shows the process as claimed as discussed in the rejection of Claim 38 above, but he does not show using lasers. Schmidt shows that it is known to carry out a method wherein a laser tool is positioned with respect to a container for removal of the lower portion (Column 9, lines 37-39). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Schmidts laser to carry out the cutting step in Beck because lasers provide accurate and easily controllable cutting.

Regarding Claim 40, Beck shows the process as claimed as discussed in the rejection of Claim 38 above, including a method wherein the removal of the upper moil portion maximizes the extent of the barrier layer in the lower moil portion (Column 4, lines 13-28; Column 5, lines 64-68; Column 6, lines 1-18), meeting applicant's claim.

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Regarding Claim 41, Beck shows the process as claimed as discussed in the rejection of Claim 38 above, including a method wherein following removal of the upper and lower moil portions there is provided a radially outwardly extending flange at an open mouth of the container (Column 6, lines 64-68), meeting applicant's claim.

Regarding Claim 42, Beck shows the process as claimed as discussed in the rejection of Claim 41 above, including a method including securing a lid to the flange (Column 6, lines 64-68), meeting applicant's claim.

Regarding Claim 43, Beck shows the process as claimed as discussed in the rejection of Claim 41 above, including a method wherein a radial outer edge of the flange is trimmed (Column 6, lines 57-63), meeting applicant's claim.

Regarding Claim 44, Beck shows the process as claimed as discussed in the rejection of Claim 43 above, including a method wherein the outer edge of the flange is cut on a circle located with respect to an axis of the open mouth of the container (Figure 16, element 136), meeting applicant's claim.

Regarding Claim 45, Beck shows the process as claimed as discussed in the rejection of Claim 41 above, including a method wherein the barrier layer extends to a radially outer edge of the flange (Figures 8-12), meeting applicant's claim.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A. Huson whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monica A Huson

September 30, 2007